III. REMARKS

The finality of the instant Office Action is not proper and premature for the following reasons:

a) A final rejection is not proper when a 35 USC 102(e)/103(a) rejection is properly refuted by reason of common ownership under 35 USC 103(c);

b) Applicant did not amend the claims in the last response or submit information in an IDS that is now being used by the Examiner; and

c) There are clear errors in the Office Action mailed November 30, 2006 that require correction and a proper opportunity for Applicant to respond.

The finality of the current action is not proper because a statement averring common ownership was filed in reply to the Office Action mailed January 17, 2006. An Office Action **cannot be made "final"** when a statement averring common ownership is made to disqualify a patent in a rejection under 35 U.S.C. §103(a), and the claims are not amended. See MPEP §706.02(I)(3) and MPEP §706.07(a).

In the Office Action mailed January 17, 2006, claims 17 and 34 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bull (US Pub No. 2003/0148774) in view of Korpela (U.S. Patent No. 6,311,055) ("Korpela"). In the reply filed on April 7, 2006, Applicant properly averred common ownership of Korpela pursuant to the requirements of 35 U.S.C 103(a). Therefore, Korpela was disqualified as a reference for purposes of U.S.C. §103(a).

Since no claim amendments were made in the reply mailed on April 7, 2006, and a statement averring common ownership was submitted to overcome the rejections, the next action **may not be a final action**. "When applying any 35 U.S.C. 102(e)/103 references against the claims of an application the Examiner should anticipate that a statement averring common ownership at the time the inventors was made may

disqualify any patent or application applied in a rejection under U.S.C. 103 based on 35 U.S.C. 102(e). **If such a statement is filed in reply to the 35 U.S.C. 102(e)/103 rejection and the claims are not amended, the examiner may not make the next Office action final if a new rejection is made.**" MPEP §706.07(a)

Therefore, pursuant to MPEP §706.07(a), the finality of the rejection mailed November 30, 2006 is premature and must be withdrawn (706.07(c)). A new Office Action with a new response period must be issued (706.07(d)).

Furthermore, the present action cannot be a final action because it is necessitated by an amendment of the claims or on information submitted by Applicant in an IDS. Under present practice, second or any subsequent actions on the merits shall be final, **except where** the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). (See MPEP 706.07(a)). Applicant did not amend any claims in the response filed on April 7, 2006 and the new rejection is not based on an information disclosure statement filed by Applicant. Thus, the current ground of rejection is not necessitated by Applicant's amendment of claims or submission of an information disclosure statement. Thus, this current office action may not be made final.

Additionally, the Final Office Action mailed November 30, 2006 (the "Final Action") the Examiner states that Claims 17 and 34 are rejected under 35 U.S.C. 103(a) over Bull (US 2003/0148774) in view of **Korpela** (US Patent No. 6,311,055). The detailed portion of the current Final Office Action, as was the prior Office Action of January 17, 2006, are replete with references to Bull and **Korpela**. Now, in the Advisory Action mailed April 12, 2007 (the "Advisory Action"), the Examiner states that the references cited by the Examiner in the rejection of claims 17 and 34 should have been Bull (US 2006/0003775) and **Boltz** (US Patent No. 6,311,055). The Examiner states in the Advisory Action, there "are typo[s] in the previous office action[.], however, the above

information are correct." In a telephone interview on April 26, 2007, the Examiner again stated that although the Office Action refers to Korpela, the patent number is to the Boltz reference. Respectfully, Applicant cannot be made to guess as to what the Examiner intended. There are certainly many more references to Korpela than there are to Boltz. In fact, there is absolutely no reference to the patent owner Boltz. It is respectfully submitted that if there are errors in the Office Action, those cannot be held against the Applicant and should not prejudice Applicant's rights. There was significant reference to Korpela in the detailed remarks of the Office Action. Applicant can only react to what is presented and cannot be expected to speculate as to what exactly the grounds of rejection may or may not be. This error can only be corrected with a new Office Action.

The "typo[s]" referred to by the Examiner are significant and serious. The Examiner's action is expected to be complete as to all matters. Given the Examiner's continued reference to Korpela, there was no reason for Applicant to believe that any other reference was intended. Applicant appropriately responded to what it believed the basis of the rejection to be. Due to these errors in the Office Action, there is no way for a clear issue to have been developed between the Examiner and the Applicant a new, corrected action is required. (See MPEP 707.07)

This petition and request for reconsideration is being filed within two-months of the action complained of, the Advisory Action mailed April 12, 2007.

Therefore, in view of the foregoing, the finality of the current action is clear error and must be corrected with the issuance of a new, non-final office action. In the event that the Examiner will not issue a new, non-final office action, prompt entry of this submission is requested so that Applicant may properly file an appeal and/or pre-appeal brief request for review.

Respectfully submitted,

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